

COMMISSION ON JUDICIAL PERFORMANCE
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FOR RELEASE
September 29, 2016

JUDICIAL PERFORMANCE COMMISSION ISSUES DECISION AND ORDER IMPOSING
PUBLIC ADMONISHMENT ON JUDGE EDMUND W. CLARKE, JR.

The Commission on Judicial Performance has issued a decision and order imposing public admonishment on Judge Edmund W. Clarke, Jr., of the Los Angeles County Superior Court. The public admonishment concerns Judge Clarke's discourteous, undignified, and inappropriate treatment of four prospective jurors, and retaliatory conduct towards one of those jurors. (A charge relating to a fifth juror was dismissed.) The conduct occurred while Judge Clarke was presiding over jury selection and adjudicating hardship requests in *People v. Diaz, et al.* on May 6, 2014. The commission concluded that Judge Clarke's mistreatment of prospective jurors eroded public confidence in the integrity and impartiality of the judicial system.

After Judge Clarke excused one juror who said she had anxiety, the juror started to make comments about his clerk, after which the judge said, "No one's ever complained about my clerk. . . . So go to the hall and stay and come in, act like an adult and you can face her and tell me what she did wrong." When the juror returned to the courtroom and tried to explain what his clerk had done, he responded by reprimanding the juror: "So because she didn't respond to your claim of anxiety with appropriate sensitivity, you attacked her in open court in front of a judge with your criticism?" Judge Clarke acknowledged he was angry at the juror and that she had gotten "under [his] skin." The commission concluded that the judge was dismissive of the juror's claim of anxiety, lectured her and made condescending comments. The commission concluded that the judge's treatment of the juror constituted prejudicial misconduct, which is conduct that is unjudicial and prejudicial to public esteem for the judicial office. Concluding that Judge Clarke engaged in additional misconduct by ordering the juror to wait in the hall, out of anger and in retaliation for her having criticized his clerk, not to make a genuine inquiry into the validity of her complaint, the commission stated, "When a judge acts out of anger and for a retaliatory purpose, the judge is not acting in the faithful discharge of judicial duties." Because the commission found that the judge acted in bad faith, the commission concluded that the judge engaged in willful misconduct.

Regarding a juror who had asserted that she could not speak or understand English, the commission determined that Judge Clarke violated his duty under the California Code of Judicial Ethics to be patient, dignified and courteous to those who appear before him by making statements including, "Don't try and fool me now, ma'am, you'll be here a lot longer," and "If you start being honest with me you'll go home. If I think you're still trying to fool me, you might be back here tomorrow while I investigate this further." The commission stated, "We do not question that the judge initially had reason to doubt the juror's language claim or that language hardship claims are frequent and difficult to evaluate. However, this does not justify the judge's harsh and disparaging comments to the juror in open court." The commission determined that the judge's discourteous and intimidating comments to the juror constituted improper action.

When a third juror thanked the judge for not revealing the amount in her checking account which she had disclosed to the court on her hardship form, the judge jokingly compared that amount with what the attorneys spent for lunch. After the juror had exited the courtroom, the judge revealed the balance of the juror's checking account. A fourth juror also wrote the amount in his checking account on his hardship claim form. Judge Clarke said to the juror, "[You have a] little bit more than the other gal. [Thirty-three] bucks," and "You are putting her in the shade with that big account." The commission determined that the judge's comments and gratuitous disclosure of the amounts in the jurors' accounts constituted prejudicial misconduct.

The commission addressed the amicus curiae, the Alliance of California Judges, which asserted that the commission should not impose discipline on Judge Clarke and instead should allow the judge's supervisor to handle the matter "locally." The commission stated that this argument reflected a misunderstanding of the role of the commission, which is responsible for investigating complaints of judicial misconduct and disciplining judges under the California Constitution. By referring a complaint of judicial misconduct to the local court, the commission would effectively be relinquishing its responsibility under the constitution. The commission stated that the suggestion that "Judge Clarke's misconduct be handled by local judges, rather than the commission, runs contrary to the manifest intent of the voters, and the responsibility entrusted to the commission by our state constitution."

The commission stated, "The judicial disciplinary process plays an important role in maintaining public trust and confidence in the judiciary and the administration of justice. For many members of the public, jury service is their only opportunity to witness the justice system at work. How a judge treats jurors can leave a lasting impression, not only of that particular judge, but of the entire judicial institution. . . . In the commission's view, jurors are more likely to be willing to serve when treated with dignity and respect. Jurors are asked to take time out of their lives as a public service, often at a financial loss. They deserve to be treated with patience, dignity and courtesy."

In deciding that the judge's conduct warranted public admonishment, the commission cited the judge's prior history of discipline involving discourteous and undignified remarks, his failure to acknowledge or appreciate the impropriety of his actions, and the nature and number of incidents of misconduct.

The decision and order is available on the commission's website at <http://cjp.ca.gov> (under "Pending Cases – Press Releases & Documents" and "Public Discipline & Decisions") and at the commission's office. Judge Clarke is represented by attorneys Edith R. Matthai, Esq., of Los Angeles and Kathleen M. Ewins, Esq., of San Francisco, California.

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The commission is composed of three judges, two lawyers, and six public members. The chairperson is Anthony P. Capozzi, Esq.

For further information about the Commission on Judicial Performance, see the commission's website at <http://cjp.ca.gov>.